

No. 11,556

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

MAGNESIUM PRODUCTS, INC., a corporation,

Appellant,

vs.

NORTH AMERICAN AVIATION, INC., a corporation, and
UNITED STATES OF AMERICA,

Appellees.

APPELLANT'S REPLY BRIEF.

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The matters presented by appellees in their reply brief have all been discussed in the opening brief of the appellants with the exception of the case of *Aircraft and Diesel Equipment Corp. v. Hirsch*, decided by the United States Supreme Court, October term, 1946, 91 L. Ed. Adv. Ops. 1313. The appellees argue that this case is authority for the position that the subcontractor has no relief, either in equity or against the prime contractor, unless the Tax Court proceedings have been terminated. Such is not the case. The Supreme Court held that (91 L. Ed. Adv. Ops. at 1326), a subcontractor, regardless of the stage of the Tax Court proceedings, could sue at law

against its customers, the prime contractors. This type of action is not forbidden by the Renegotiation Acts and the Supreme Court held that all questions of constitutionality could be presented in such an action.

Therefore, the decision cited by appellees does not require the affirmance of the District Court judgment in this case, and this court does have jurisdiction to rule on the constitutionality of the act regardless of the status of the proceedings in the Tax Court.

Respectfully submitted,

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